



Comptroller General  
of the United States  
Washington, D.C. 20548

Arsenoff  
147958

## Decision

**Matter of:** Heritage Garden Center, Inc.; S.C. Jones  
Services, Inc.

**File:** B-248399.4

**Date:** October 28, 1992

Neil S. Lowenstein, Esq., Vandeventer, Black, Meredith & Martin, for Heritage Garden Center, Inc.; Steven C. Jones for S.C. Jones Services, Inc., the protesters.  
S.D. Ashe for S.D. Ashe Landscaping & Services, Inc., an interested party.

Paul M. Fisher, Esq., Department of the Navy, for the agency.

Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protests that agency improperly included a technically unacceptable proposal in the competitive range are denied where record shows that the proposal was rated as acceptable.
2. Protests that agency conducted overly extensive technical discussions with awardee while not conducting technical discussions with the protesters are denied where record shows that awardee's discussion questions specifically related to those areas found to be deficient in its proposal and where no technical discussion questions of the protesters were necessary because each had achieved the highest technical rating possible.
3. Protests that agency failed to consider whether awardee's low prices indicated a lack of technical understanding are denied where agency did consider the relationship of awardee's prices to the contract requirements and concluded that they were reasonable to perform the required effort.

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## DECISION

Heritage Garden Center, Inc. and S.C. Jones Services, Inc.<sup>1</sup> protest the award of a fixed-price contract to S.D. Ashe Landscaping & Services, Inc., under request for proposals (RFP) No. N62470-90-R-5771, issued by the Department of the Navy for grounds maintenance services at the Naval Weapons Station in Yorktown, Virginia. The protesters allege that Ashe submitted a technically unacceptable proposal which should not have been included within the competitive range, that the agency improperly conducted discussions, and that the awardee's price was improperly evaluated.

We deny the protests.

The RFP was issued on April 15, 1991, and it contemplated the award of a fixed-price contract to the low, technically acceptable offeror. Technical acceptability was to be measured on the basis of three factors: (1) contractor experience; (2) resource allocation and work plans; and (3) contractor management. Each technical evaluation factor contained a number of subfactors. The factor which is relevant to these protests, resource allocation and work plans, was comprised of four subfactors: (a) equipment and tools; (b) facilities and storage areas; (c) personnel staffing; and (d) work plans. The RFP further stated that the agency would consider whether the prices proposed reflected an understanding of the required services and were realistic in terms of the offeror's proposed approach.

Eight initial proposals were received on the June 13 due date. Four proposals, including those submitted by the awardee and by both of the protesters, were found to be technically acceptable with respect to each of the three evaluation factors; four others were not. Nevertheless, all eight proposals were included in the competitive range<sup>2</sup>

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<sup>1</sup>Jones' protest was originally assigned file number B-248399.3; however, we closed that file on September 3, 1992, in order to issue a single decision under file number B-248399.4 since the issues presented by both protesters are basically the same.

<sup>2</sup>The protesters argue that the agency improperly included the four other initial proposals in the competitive range. The record shows that none of these proposals as revised after discussions was found to be acceptable or considered for award. We therefore conclude that the protesters, whose initial and revised proposals were found to be acceptable, could not have been prejudiced by the inclusion of the four  
(continued...)

because the contracting officer concluded that the unacceptable proposals could possibly become acceptable through discussions. While Heritage and Jones both received acceptable ratings on all evaluation subfactors, Ashe did not. Ashe received a "borderline" rating on the "work plan" subfactor under the overall evaluation factor relating to resource allocation and work plans because its proposal failed to specify the numbers and types of personnel to be used during contract performance and because its yearly and monthly work plans were not sufficiently coordinated with the equipment it proposed; the "borderline" rating on one subfactor did not affect the awardee's acceptable rating on the evaluation factor or its overall acceptable rating.<sup>1</sup>

All initial proposals were determined to have pricing disparities. Written discussions were conducted in which each offeror was asked to address these disparities and in which Ashe was asked to address the two issues which resulted in its "borderline" rating under the subfactor relating to work plans. Upon review of best and final offers (BAFO), Ashe was determined to be acceptable with respect to all evaluation subfactors. The final prices of the four offerors who were eventually determined to be technically acceptable were as follows:

Ashe	\$3,513,173.20
Jones	\$4,073,660.00
Heritage	\$4,361,936.50
Offeror A	\$4,811,987.00

Following a favorable analysis of Ashe's proposed prices, an award was made to the firm on April 9, 1992.

The protesters challenge the award to Ashe on three principal bases: (1) because the RFP stated that the technical evaluation was to be conducted on a "pass/fail" basis, the agency acted improperly in not rejecting Ashe's initial proposal as it was not rated acceptable under the subfactor relating to work plans; (2) the agency acted improperly in conducting allegedly extensive technical discussions with Ashe while conducting no technical discussions with the protesters; and (3) the agency failed to consider that Ashe's initial and final prices were so low that they

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<sup>2</sup>(...continued)  
proposals in the competitive range.

<sup>3</sup>The evaluators used three ratings: unacceptable, borderline and acceptable.

indicated the firm did not understand the contract requirements.

As the protesters point out, the RFP did state that technical acceptability would be measured on a "pass/fail" basis. This does not, however, as the protesters suggest, compel a conclusion that the agency was somehow precluded from determining that proposals with deficiencies could not be improved through discussions. In fact, the solicitation specifically provided that the contracting officer would establish a competitive range containing all proposals having a "reasonable chance of being selected for award." The inclusion of such proposals in the competitive range is required by Federal Acquisition Regulation (FAR) § 15.609(a) which provides that "[w]here there is doubt as to whether a proposal is in the competitive range, the proposal should be included."

As a general matter, whether or not a proposal is to be included in the competitive range is a matter committed to discretion of the contracting officer. We will not disturb the contracting officer's conclusion in this regard unless we find it to be unreasonable. See Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

Ashe was not rated unacceptable under any factor or subfactor; rather, the firm received a doubtful--or "borderline"--rating on one technical subfactor, largely for informational deficiencies in its work plans which were easily remedied in its BAFO. Nothing in the RFP or the evaluation plan used in this procurement compelled a finding of unacceptability for an entire evaluation factor based on a borderline or even an unacceptable rating under one subfactor. Moreover, the term "borderline" as used by the evaluators did not indicate unacceptability as suggested by the protesters; rather, the scale contained a rating of "unacceptable" for this purpose. Accordingly, we have no basis to conclude that the agency acted unreasonably in exercising its discretion to include Ashe's proposal in the competitive range. See Information Sys. & Networks Corp., supra.

Likewise, we find no support for Heritage and Jones' contentions that discussions with Ashe were improper or that the agency was required to conduct technical discussions with them. The Navy properly conducted technical discussions with Ashe since the firm's proposal was included in the competitive range and had technical deficiencies. FAR § 15.610. The content and extent of those discussions, and the discussions held with other competitive range offerors, was a matter of the contracting officer's judgment based on the particular facts of the procurement. Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55.

The record shows that Ashe was asked specifically to address only those areas relating to the deficiencies in its work plans which had been identified by the evaluators when they reviewed the firm's initial proposal and that the awardee successfully addressed the deficiencies in its BAFO. The record further shows that Heritage and Jones had no deficiencies in their technical proposals and, thus, no technical discussions were necessary with these firms since there was no opportunity for them to improve their already acceptable technical ratings under this solicitation which provided that "acceptable" was the highest rating which could be achieved. Under these circumstances, we have no legal basis upon which to object to the content and extent of discussions. Huff & Huff Serv. Corp., supra.


Finally, the record does not support the protesters' contention that the agency failed to consider whether Ashe's prices were so low as to indicate that the firm did not understand the RFP technical requirements. As it did with all offerors, the Navy reviewed Ashe's proposed prices on a line item-by-line item basis and compared them to the prices submitted by other offerors, as well as to the government estimate and the present prices being paid by the Navy for the same work. The evaluators found apparent disparities among 21 line item prices in Ashe's proposal and recommended that the firm review the technical specifications in the RFP in conjunction with these line item prices.

Following discussions, which included Ashe's pricing disparities, the firm submitted a BAFO with raised prices for 17 of the 21 line items of concern to the Navy. The evaluators found that these adjustments caused the offeror's prices to become closer to the government estimates and to the prices submitted by other offerors. The evaluators specifically noted that Ashe had clearly explained that it was raising its prices to account for increased labor, equipment and materials costs associated with performing the various tasks in the solicitation. Based on the information contained in Ashe's BAFO, the evaluators concluded that the firm's prices were sufficient for contract performance. These conclusions were adopted in the final award recommendation which also stated that Ashe's "priced offer" was "responsive to the solicitation's requirements."

Thus, we find that the agency reasonably considered the impact of Ashe's prices on its technical understanding of the contract. While the protesters have expressed generalized disagreement with the agency's conclusions as the result of the analysis the Navy performed, such generalized

disagreements, standing alone, do not establish that the agency's conclusions were unreasonable. Petro-Eng'g, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677.

The protests are denied.

  
for James F. Hinchman  
General Counsel